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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 25th November, 2024

No. 473936-HII(2)-2024/17713.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **45/2021** dated **25.09.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

RAJESH VAID, HOUSE NO.720/18, BAPU DHAM, SECTOR 26, CHANDIGARH. (Workman)

AND

1. M/S A TO Z SERVICES, B.O. JAIN TOWER, SCO 20, 1ST FLOOR, ADJOINING UNITED BANK OF INDIA, AMBALA CHANDIGARH HIGHWAY ZIRAKPUR THROUGH ITS MANAGER/PROPRIETOR. MOBILE NO.9876041914.
2. SENIOR CITIZEN HOME SECTOR 43, CHANDIGARH THROUGH ITS R.M. (RESIDENTIAL MANAGER). (Management)

AWARD

1. Rajesh Vaid, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed and deployed as Chowkidar-cum-Kitchen-Helper on 02.04.2013 vide letter No.JA/12/78 dated 02.04.2013 on the basis of outsourcing in the establishment of management No. 2 (Senior Citizen Home, Sector 43, Chandigarh operating under the management of Chandigarh Child and Women Development Corporation) vide appointment letter dated 02.04.2013. The last drawn wages of the workman were ₹ 10,994/- (approx.) per month after deductions. The workman was performing his duties to the entire satisfaction of the management No.2 and never gave any opportunity of complaint. The workman was performing the duty of Chowkidar-cum-Kitchen-Helper and therefore, falls within the definition of 'workman' under Section 2(s) of the ID Act. The workman was covered under the Employees Provident Fund (EPF) scheme (account no. is PBCHD00388920000000418) and Employees' State Insurance (ESI) scheme. The workman continuously & without any interruption had worked for 6 years and performed his duties to the entire satisfaction of management No.1 & 2. The workman has

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worked for extra hours whenever there was a shortage of adequate staff in the establishment. The work & conduct of the workman was satisfactory during the entire period of his service. On 09.08.2019 the workman was refused work by management No.1 without issuing any notice to the workman which under Section 2(oo) of the ID Act amounts to retrenchment. The refusal of work resulting in termination by management No.1 is illegal, arbitrary and in contravention of the provisions of the ID Act and also in violation of the principle of natural justice as no notice was served or notice pay was paid in lieu of the notice period to the workman. No retrenchment compensation has been paid to the workman. Neither charge-sheet was issued nor any enquiry was held against the workman by management No.1 & 2. The workman served upon the managements demand notice dated 14.08.2020, however, no amicable settlement could be made possible within stipulated period for conciliation of the dispute and therefore, the conciliation proceedings failed. At the time of termination of services of the workman, neither the post held by him is abolished nor the work of the said post has receded nor any such or similar situation has arisen, therefore, the action of terminating the services of the workman is an illegal action and unfair labour practice under Section 25T of the ID Act. The workman has continuously worked for 240 days during the period of 12 calendar months preceding the date of his termination i.e. 09.08.2019. The services of the workman were illegally terminated in violation of the provisions of Section 25F, 25G and 25H of the ID Act by managements which makes the termination of the workman void ab-initio. The workman is not gainfully employed from the date of termination of services. The workman is facing financial hardship due to his termination and the present COVID-19 situation as he is the sole bread earner of his family and has to meet both the ends to support his family. Prayer is made that the workman may be reinstated with continuity of service along with full back wages.

3. On notice, management No.1 contested the claim statement by filing written statement dated 23.07.2021, filed on 26.07.2021, wherein preliminary objections are taken on the ground that workman has served the incomplete plaint / statement of claim as the annexures / documents mentioned in the plaint are not served by the workman hence the management reserves its right to amend their written statement after receiving the complete plaint with the permission of this Court. The statement of claim / plaint being false, frivolous and devoid of any cause of action should be dismissed *in-limine*. Management No.1 is one of the leading reputed firm in India and is well known man service provider in the manpower service industry. The workman is guilty of mis-representations, mis-statements, concoctions and concealment of material facts. The claim is totally devoid of merits whatsoever. The workman has deliberately failed and neglected to disclose true and correct facts and the claim contains mis-statement, false to the knowledge of the workman. The workman has not approached to this Court with clean hands and the claim has been filed as an afterthought to commit mischief in order to make the answering management succumb to the illegitimate demands of the workman otherwise legally unsustainable. The claim statement has been filed only to harass, coerce, blackmail and pressurize the managements with the aim that the managements shall succumb to such illegal demands. The claim statement is without any cause and is liable to be rejected on this ground as well. The claim is filed without any cause of action, entirely vitiated and is liable to be dismissed. No cause of action exists in favour of the workman and the against the managements. The claim statement is entirely vexatious and is an attempt by the workman to harass the managements. The present statement of claim is abuse of the process of law and same is filed with intention to extort money from the innocent persons. The workman cannot take the benefit of his own wrong.

4. Further, on merits, it is stated that the workman was appointed by the management No.1 on the basis of outsourcing in the establishment of management No.2 on 01.07.2015. It is denied that last drawn monthly wages of workman were ₹10,994/-. It is further denied that workman has worked to the entire satisfaction of management No.2 in their establishment. Management No.2 and the other concerned persons of the management No.2 informed to the management No.1 that workman is an in-disciplined person, usually found in sleeping during the working hours and also so many times shouted in the embellishments' persons. The above-mentioned objections were sent by management No.2 along with persons of management No.2 in written communication to management No.1 and demanded the removal of the workman. The facts that the workman was performing duty of Chowkidar-cum-Kitchen Helper and falls within the definition of 'workman' as defined under Section 2(s) of the ID Act and further that workman was covered under the EPF and ESI

schemes are matter of record. Further, similar stand is taken as taken in the preliminary objections. It is stated that the workman failed to satisfy his plea before the Assistant Labour Commissioner, U.T. Chandigarh. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed with heavy cost.

5. Management No.2 contested the claim statement by filing separate written statement dated 31.08.2021 filed on 02.09.2021 wherein preliminary objections / submissions are made to the effect that the present claim statement is not maintainable against the answering management as the workman was engaged by the contractor i.e. M/s Jain Associates not by the answering management. The workman has not impleaded M/s Jain Associates as party in the present case which is necessary party for proper adjudication of this case. The answering management had executed a contract with M/s Jain Associates for providing manpower on outsource basis to the answering management from 01.02.2010 to 31.01.2011 which was extended till 15.08.2013. The condition No. 10 of the said agreement is reproduced as below :

"The Contractor will engage his staff to execute the work satisfactorily as allotted. Such persons engaged by the contractor shall be his employees for all intents and purposes. These persons shall have to undergo Police Verification and the Verification report to this effect shall be submitted by the contractor to CCWDC's office."

Thereafter, the contract was awarded to M/s Secure Guard Security & Manpower from 16.08.2013 to 30.06.2015 and after that again contract was awarded to M/s A to Z services from 01.07.2015 to 31.03.2018 and 01.04.2018 to 31.05.2020 for providing manpower to the answering management on the same terms and conditions. The workman was engaged by M/s Jain Associates and deployed as Chowkidar-cum-Kitchen Helper in Senior Citizen Home Sector 43, Chandigarh vide letter No.JA/13/77 dated 02.04.2013. Workman was engaged by the contractor i.e. M/s Jain Associates and he was terminated by the M/s A to Z Services management No. 1, not by the answering management. There was no relationship of employer and employee between the answering management and workman as he was engaged by the contractor i.e. M/s Jain Associates. Answering management has written a letter dated 06.08.2019 to M/s A to Z Services to replace the workman as the office received many complaints from Member (Managing Committee) staff and Residents of the Senior Citizens' Home regarding his mis-behaviour and negligence towards performing his duties.

6. Further, on merits, it is admitted to the extent that the workman was appointed and deployed as Chowkidar-cum-Kitchen helper on 02.04.2013 on outsource basis. The management No. 2 received many complaints from the residents, staff and Management Committee of the Senior Citizens' Home against the workman. The workman was in-disciplined person, usually found sleeping during the working hours and also negligent towards performing his duties. The facts that the workman was performing duty of Chowkidar-cum-Kitchen Helper and falls within the definition of 'workman' as defined under Section 2(s) of the ID Act and further that workman was covered under the EPF and ESI schemes are matter of record. The fact that on 09.08.2019, the workman was refused work by management No.1 without issuing any notice to the workman does not relates to answering management, hence needs no reply. The facts relate to management No.1 that the services of the workman are terminated by management No.1 in violation to the provisions of the ID Act, principle of natural justice and that the workman was neither served notice nor paid notice pay in lieu of notice period nor paid retrenchment compensation and further that no charge sheet was issued, no inquiry was held against the workman. As the workman was the employee of management No. 1 and his services were also terminated by the management No.1, therefore there was no need to issue any charge-sheet and enquiry by the management No. 2. It is a matter of record that the workman issued a demand notice dated 24.08.2020 and conciliation proceedings failed. The fact relates to management No.1 that the workman had continuously worked for 240 days during the 12 calendar months preceding termination. The fact relates to management No.1 that services of the workman were terminated illegally in violation to Section 25F, 25G & 25H of the ID Act. Rest of the averments of claim statement are denied as wrong except para 12 wherein it is denied for want of knowledge that the workman is not gainfully employed from the date of termination of his services. Prayer is made that claim statement may be dismissed with cost qua the answering management being devoid of any merits in the interest of justice.

7. Workman filed rejoinder to the written statement of management No.1 and separate rejoinder to the written statement of management No.2 wherein the contents of the respective written statement except admitted facts, are denied as wrong and averments of claim statement are reiterated.

8. From the pleadings of the parties, following issues were framed vide order dated 11.01.2021 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there exists no employer-employee relationship between management No.2 and workman ? OPM-2
3. Relief.

9. In evidence, workman Rajesh Vaid examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with documents Exhibit 'WW1', Exhibit 'WW1/A' to Exhibit 'WW1/E' (original of Exhibit 'WW1/E' seen & returned).

Exhibit 'WW1' is photocopy of letter bearing Endst. No.JA/13/78 dated 02.04.2013 addressed to the Managing Director, CCWDC, Chandigarh by Jain Associates whereby Rajesh Kumar S/o Sukhpal was deployed as Chowkidar-cum-Kitchen Helper in Senior Citizen Home, Sector 43, Chandigarh.

Exhibit 'WW1/A' (colly.) is photocopy of statement of bank account No.3249001700036395 of Rajesh Vaid maintained with Punjab National Bank for the period 02.04.2013 to 01.09.2019.

Exhibit 'WW1/B' (colly.) is photocopy of EPF statement in r/o PBCHD/38892/418 with reference to grievance number CEPFO/P/2017/02979.

Exhibit 'WW1/C' (colly.) is photocopy of attendance register of Senior Citizen Home, Sector 43-A, Chandigarh.

Exhibit 'WW1/D' (colly.) is photocopy of Information provided to Rajesh Vaid under RTI Act, 2005 bearing Ref. No.4191 dated 11.02.2021.

Exhibit 'WW1/E' (colly.) is photocopy of Unique Disability ID of Rajesh Vaid issued on 19.02.2020 along with OPD card of PGI of Rajesh Kumar.

10. On 07.05.2014 Learned Representative for the workman closed the evidence in affirmative on behalf of the workman.

11. On the other hand, management No.1 examined MW1 Ankit Kumar Jain - Proprietor of M/s A to Z Services, who tendered his affidavit Exhibit 'MW1/A' along with documents Exhibit 'MW1/1' to Exhibit 'MW1/6' and Mark 'M1'.

Exhibit 'MW1/1' is copy of letter Reference No.2682 dated 06.08.2019 regarding replacement of Rajesh Kumar issued by Company Secretary of management No.1 to M/s A to Z Services-management No.2.

Exhibit 'MW1/2' is copy of complaint dated 08.01.2019 filed by Gurnam Singh, Member, Managing Committee N.G.O. Saanjhi Soch, 38, Sector 10-A, Chandigarh to the Director Social Welfare CCWDC, Chandigarh relating to the subject to visit report of Senior Citizen Home, Sector 43-A, Chandigarh.

Exhibit 'MW1/3' is copy of another complaint dated 27.02.2019 filed by Dharamvir, Driver, Senior Citizen Home Sector 43-A, Chandigarh to Resident Manager, Senior Citizen Home, Sector 43-A, Chandigarh accompanied with photograph **Mark 'M1'**.

Exhibit 'MW1/4' is copy of complaint dated 12.09.2018 by Ajit Singh, Mess Committee, Room No. 11, Sector 43-A, Chandigarh to Resident Manager, Senior Citizens' Home, Sector 43-A, Chandigarh regarding complaint against Mr. Rajesh, Chowkidar.

Exhibit 'MW1/5' is copy of another complaint dated 10.09.2018 filed by Kewal Krishan, Member Managing Committee, Room No.5, Sector 43-A, Chandigarh to the Resident Manager, Senior Citizens' Home, Sector 43-A, Chandigarh on the subject to complaint of Shri Rajesh Kumar, Chowkidar and complaint dated 19.09.2018 filed by Gian Kaur, Room No.1, Sector 43-A, Chandigarh to the Manager, Senior Citizens' Home, Sector 43-A, Chandigarh.

Exhibit 'MW1/6' is copy of letter Reference No.2268 dated 13.10.2020 by Company Secretary for the Managing Director of management No.1 to M/s A to Z Services-management No.2 relating to the subject 'regarding complaints filed by Shri Rajesh Vaid with the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh whereby the complaints Exhibit 'MW1/2' to Exhibit 'MW1/5' were forwarded.

12. On 28.08.2024 Learned Representative for management No.1 closed evidence.

13. Management No.2 examined MW2 Rajni Gupta - Company Secretary, Child & Women Development Corporation, Chandigarh (CCWDC), who tendered her affidavit Exhibit 'MW2/A' along with documents Exhibit 'MW2/1' to Exhibit 'MW2/3'.

Exhibit 'MW2/1' is copy of agreement dated 21.01.2010 between Managing Director, Chandigarh Child & Women Development Corporation Limited and M/s Jain Associates.

Exhibit 'MW2/2' is copy of letter bearing Reference No.JA/13/77 dated 02.04.2013 from Proprietor, Jain Associates to the Managing Director, C.C.W.D.C., Chandigarh for providing the Chowkidar-cum-Kitchen Helper.

Exhibit 'MW2/3' is copy of letter bearing Reference No.2682 dated 06.08.2019 addressed from Company Secretary for Managing Director to M/s A to Z Service, Badheri, Chandigarh regarding replacement of Shri Rajesh Kumar, Chowkidar-cum-Kitchen Helper, Senior Citizens Home, Sector 43, Chandigarh.

14. On 28.08.2024 Learned Law Officer for management No.2 closed oral evidence and on 25.09.2024 closed documentary evidence.

15. I have heard the arguments of Learned Representatives for the workman and management No.1 and Learned Law Officer for the management No.2 and perused the judicial file. My issue-wise findings are as under :-

Issues No. 1 & 2 :

16. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

17. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management No.2.

18. Under these issues, workman examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. The workman supported his oral version with documents Exhibit 'WW1', Exhibit 'WW1/A' to Exhibit 'WW1/E'.

19. On the other hand, management No.1 examined MW1 Ankit Kumar Jain - Proprietor of M/s A to Z Services, who vide his affidavit Exhibit 'MW1/A' deposed the entire contents of written statement of management No.1, which are not reproduced here to avoid repetition. MW1 supported his oral version with documents Exhibit 'MW1/1' to Exhibit 'MW1/6' and Mark 'M1'. Management No.2 examined MW2 Rajni Gupta - Company Secretary, CCWDC vide her affidavit Exhibit 'MW2/A' deposed the entire contents of written statement of management No.2, which are not reproduced here for the sake of brevity and to avoid repetition. MW2 supported her oral version with documents Exhibit 'MW2/1' to Exhibit 'MW2/3'.

20. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly the workman was deployed through contractor on outsource basis with management No.2 w.e.f. 02.04.2013 as Chowkidar-cum-Kitchen Helper. As proved from Exhibit 'MW2/1', the management No.2 had executed a contract for providing manpower on outsource basis with M/s Jain Associates from 01.02.2010 to 31.01.2011 which was extended till 15.08.2013. In this manner the workman was working under contractor - M/s Jain Associates for the period from the date of his appointment i.e. 02.04.2013 up to 15.08.2013. Exhibit 'MW2/2' is letter dated 02.04.2013 issued from Proprietor, Jain Associates to the Managing Director, CCWDC, Chandigarh wherein it is mentioned that as per office order under reference i.e. letter No.8683 dated 20.03.2013, they have deployed Mr. Rajesh Kumar S/o Sukhpal as Chowkidar-cum-Kitchen Helper in Senior Citizens Home, Sector 43, Chandigarh. Thereafter on allotment of next contract to M/s Secure Guard Security & Manpower, the workman remained deployed with the management No.2 from 16.08.2013 to 30.06.2015 under M/s Secure Guard Security & Manpower. Thereafter, on allotment of next contract to M/s A to Z Services (*here-in 'management No.1'*) for the period w.e.f. 01.07.2015 to 31.03.2018 and then from 01.04.2018 to 31.05.2020 the workman remained deployed with management No.2 from 01.07.2015 till termination of his services w.e.f. 09.08.2019. The workman remained in continuous employment as contractual employee from the date of his appointment i.e. 02.04.2013 till termination of his services i.e. 09.08.2019 without any interruption and break. Thus, the workman falls within the definition of continuous service as defined in Section 25B of the ID Act and has completed continue service of 240 days in 12 calendar months preceding the date of termination.

21. It is own case of the workman that he was appointed by the contractor and his services were terminated on 09.08.2019 by the management No.1 - M/s A to Z services. This plea of the workman supports the plea of management No.2 that there is no employer-employee relationship between management No.2 and workman. The employer of the workman was contractor of the relevant period during tenure of his service and last employer was management No.1 - M/s A to Z Services. Workman / AW1 when put to cross-examination by management No.2 admitted as correct that he was appointed through Jain Associates in the year 2013 but not by M/s A to Z Services. He worked under M/s Jain Associates till 15.08.2013 and thereafter the contract was awarded to M/s Secure Guard Security & Manpower w.e.f. 01.07.2015 to 31.03.2018. AW1 in his cross-examination further stated that he received a phone call from the contractor that he has been removed from service. AW1 further stated that he has not been issued appointment letter or termination letter by management No.2. AW1 further stated that he was paid monthly wages by the contractor - management No.1. AW1 admitted as correct that he is seeking reinstatement with continuity of service and back wages from contractor - management No.1. AW1 when put to cross-examination by management No.1 stated that he was appointed as Chowkidar-cum-Kitchen Helper w.e.f. 02.04.2013 by the contractor M/s Jain Associates. He was informed by M/s Jain Associates that his services were on contractual basis. AW1 further stated that his services were terminated by the management No.1 on 09.08.2020 on the instructions of Manager namely Dinesh Dixit, Manager of Senior Citizens Home, Sector 43, Chandigarh. When his services were terminated, he approached the contractor for reinstatement. The contractor - management No.1 refused to take him back in service. AW1 voluntarily stated that the contractor told that he will adjust him within 15 days with some other organisation but he did not adjust. The aforesaid version of AW1 would prove that the workman was employed by the contractor, he was paid monthly wages by the contractor and his services were terminated by the contractor. MW1 (witness examined by the contractor - management No.1) when put to cross-examination by management No.2 stated that the workman was paid salary by the management No.1. MW1 further stated that it is within the purview of management No.1 to engage and terminate the services of the workman. From the discussion above, it is duly proved that there is no direct relationship of employer-employee between the management No.2 i.e. department of Senior Citizens Home under the management of CCWDC, Chandigarh and workman.

22. As far as termination of services of the workman are concerned, from written complaints Exhibit 'MW1/2' to Exhibit 'MW1/6' accompanied with photograph Mark 'M1', it is proved that management No.2 on receipt of many complaints from Resident Manager, Member Managing Committee as well as

from residents of the Home regarding workman's behaviour and negligence towards performance of his duties, issued a letter Reference No.2682 dated 06.08.2019 / Exhibit 'MW2/3' to Management No.1 seeking to replace Rajesh Kumar - Chowkidar-cum-Kitchen Helper, Senior Citizens Home, Sector 43, Chandigarh. The employer - management No.1 on receipt of letter Exhibit 'MW2/3' terminated the services of the workman w.e.f. 09.08.2019. Management No.1 has taken the plea that the workman was in-disciplined and was found sleeping in duty hours and there were complaints Exhibit 'MW1/2' to Exhibit 'MW1/6' against the workman which were received from management No.2 along with letter dated 06.08.2019 / Exhibit 'MW1/1' seeking to replace Rajesh Kumar, therefore, his services were terminated. On the other hand, to explain the photograph / Mark 'M1' wherein workman is seen sleeping on chair, workman has offered explanation that he is suffering from Ophthalmological problem (eye problem) and in fact after taking eye drops, he closes his eyes for some time and the same was in the knowledge of Resident Manager also. The workman has placed on record copy of his medical record vide Exhibit 'WW1/E' showing that he has disability of low vision and percentage of disability is 40%. To my opinion, even if the workman is suffering from disability of low vision, it is not expected that he should sleep in duty hours. If a Watchman sleeps on duty, several negative consequences could arise depending on the situation. The primary duty of a Watchman is to ensure the safety and security of a location. If the Watchman is asleep, he is unable to detect or respond to potential threats such as theft, trespassing or other criminal activities. If the workman was found sleeping during duty hours and there were complaints against his behaviour, then at the most it amounts to misconduct due to which the employer or organisation may lose confidence in the reliability of the Watchman. In the circumstances the employer is bound to take disciplinary action against the workman. In the present case, the employer-management No.1 did not initiate any disciplinary proceedings against the workman. MW1 (witness of management No.1- employer) when put to cross-examination by workman stated that in his affidavit he has mentioned that the workman was in-disciplined. The management No.1 did not issue any memo or charge sheet to the workman against his alleged act of indiscipline. MW1 in his cross-examination further stated that the workman was verbally asked about his misconduct of sleeping in duty hours. No written action was taken against the workman for his alleged misconduct. As discussed above, the workman fulfils the recruitment of Section 25B of the ID Act, therefore, the provisions of Section 25F of the ID Act is attracted which lays down certain conditions precedent to retrenchment of workmen. For better appreciation Section 25F of the ID Act is reproduced as below :-

"25F. Conditions precedent to retrenchment of workmen. - No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette]."*

23. In the present case, management No.1 - contractor failed to prove the compliance of the conditions laid down under Section 25F of the ID Act. It is neither pleaded nor proved by the management No.1 that before retrenchment of the services of the workman, he has been issued prior notice indicating the reason for retrenchment. It is also not case of the management No.1 that workman has been paid notice pay in lieu of the notice period or that the workman has been paid compensation at the time of retrenchment. The management No.1 in para 7, on merits, of the written statement taken plea that the workman was relieved on the request of principal employer - management No.2. The management No.1 has failed to prove that management

No. 2 ever requested or recommended for retrenchment or termination of the services of the workman. The management No.1 has terminated the services of the workman on the basis of letter dated 06.08.2019 / Exhibit 'MW2/3' issued by the management No.2. In the letter dated 06.08.2019 / Exhibit 'MW2/3' the management No.2 has requested for replacement of workman and not for termination of his services and in this regard, MW1 (witness of management No.1 - employer) when put to cross-examination by the management No.2 admitted as correct that management No.2 never made any request to management No.1 to terminate the services of the workman. MW1 admitted as correct that management No.2 made a written request for replacement of the workman on the basis of complaint against him. To my opinion, in view of letter dated 06.08.2019 / Exhibit 'MW2/3', the management No.1 - contractor apart from initiating disciplinary action, would have offered alternative employment to the workman in some other organisation. MW1 when put to cross-examination by the management No.2 stated that management No.1 has contracts with other departments also. The management No.1 has power to deploy any worker from one department to another. The volunteer statement of MW1 that practically no department permits the contractor to deploy the worker of other department in their office is without any basis. In view of the reasons recorded above, it is proved that services of the workman are terminated by the management No.1 in violation to Section 25F of the ID Act.

24. The workman has alleged that his last drawn monthly wages were ₹ 10,994/- after deductions. The management No.1 has denied the same being incorrect but management No.1 did not mention the amount of last paid monthly wages in the written statement. From the workman's bank account statement for the period 02.04.2013 to 01.09.2019 / Exhibit 'WW1/A' it is proved that last monthly wages were paid to the workman in the sum of ₹13,090/- on 14.08.2019.

25. Keeping in view the fact that the workman is suffering from 40% disability of low vision, his length of service from 02.04.2013 to 09.08.2019 and last paid monthly wages of ₹ 13,090/-, workman is held entitled to lump sum compensation of ₹ 55,000/- to be paid by management No.1 - contractor.

26. Accordingly, issue No.1 is proved in favour of the workman and against the management No.1. Issue No.2 is proved in favour of the management No.2 and against the workman.

Relief :

27. In the view of foregoing findings on the issue No.1 above, the present industrial dispute is allowed. The workman is held entitled to lump sum compensation of ₹55,000/- to be paid by management No.1 - contractor. The management No.1 is directed to comply with the Award within three months from the date of publication of the same in Government Gazette failing which the management shall be liable to pay interest at the rate 8% per annum on the compensation amount from the date of this Award till the date of actual realisation. Appropriate Government be informed. Copy of this Award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 25.09.2024.

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT**Notification**

The 25th November, 2024

No. 474013-HII(2)-2024/17715.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **13/2021** dated **27.09.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

SMT. SEEMA RANI, W/O SHRI MANISH KUMAR, R/O HOUSE NO.3028/1, SECTOR 47-D, CHANDIGARH. (Workman)

AND

1. THE EXECUTIVE ENGINEER, ELECTRICAL DIVN. NO.3, SECTOR 4, U.T. CHANDIGARH.
2. PUNJAB STATE EX-SERVICEMEN CORPORATION (PESCO), SCO NO.89-90, SECTOR 34-A, CHANDIGARH THROUGH ITS GENERAL MANAGER (PERS. & PROJECTS).
3. M/S DASHMESH ELECTRICALS H.NO.550, PHASE - III-A, S.A.S. NAGAR, MOHALI, THROUGH ITS PROPRIETOR. (Management)

AWARD

1. Seema Rani, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was initially appointed as Clerk-cum-Computer Operator in the office of Sub Divisional Engineer, Electrical Sub-Division No. 6, U.T., Chandigarh, under Executive Engineer, Electrical Division No.1, UT, Chandigarh, through Punjab State Ex-Servicemen Corporation (PESCO), Sector 34, Chandigarh, on 03.02.2010, vide appointment letter dated 02.02.2010. The appointment was against sanctioned post and the sanction of the same was being granted by the Office of Superintending Engineer, Project P.H. Circle, Sector-9, Chandigarh, from time to time. The workman discharged her assigned duties with full devotion and competence. The workman continuously worked in the office of Sub-Divisional Engineer, Electrical Sub Division No. 6, U.T., Chandigarh, without any break till March, 2015; when the workman was transferred in the office of the management vide office order dated 18.03.2015. In compliance of the order dated 18.03.2015, the workman submitted the joining report in the office of the management. The workman kept working in the office of the management No.1 without any break, through PESCO, till 18.01.2019 when the contract / agreement entered into with the PESCO, for providing manpower, was ended by the management. As a result of termination of contract / agreement with PESCO, the allotment order of the workman, for the period from 19.01.2019 to 18.01.2020, was awarded to M/s Dashmesh Electricals, H.No.550, Phase-III -A, S.A.S. Nagar, Mohali, by the management, after following the due procedure, vide its office Memo No.3682-87, dated 31.12.2018. The workman was issued appointment letter dated 18.01.2019 by M/S Dashmesh Electricals. The validity of said allotment order, allotted to M/s Dashmesh Electricals, of the workman was further extended up to 31.01.2020 by the management, vide its Office Memo No.57, dated 03.01.2020, as tender for further appointment of the workman was invited by the management vide Endst. No.E.E.E.-3/399-406, dated 10.01.2020, which was due to be opened on 20.01.2020. But, on the very same day of opening of tender, i.e. 20.01.2020, corrigendum was issued by the management for cancellation of tender vide its office Endst. No.730-37, dated 20.01.2020, for the reasons best known to its

office. However, the tender notice (Tender No. 108) was again got prepared by the management for calling the tender, which was scheduled to be opened on 28.01.2020, but the same was not uploaded on official website without there being any reason whatsoever. Even on 31.01.2020, the workman was not intimated regarding termination of her services. Therefore, the workman continued attending the office and worked up to 03.02.2020, when she was verbally told by the management that her services have been terminated and she is not required to attend office w.e.f. 04.02.2020, without giving any notice, as required under the ID Act and opportunity of hearing despite the fact that the workman has worked continuously in the department for a period of 10 years, without any break. Being aggrieved by the said illegal & arbitrary action on the part of the management, the workman approached M/s Dashmesh Electricals, the Contractor, and apprised it about the termination of her services by the management. M/s Dashmesh Electricals, the Contractor, told the workman that as the office of the management has neither renewed the contract / agreement entered with it (M/s Dashmesh Electricals) nor invited the tender afresh, it (M/s Dashmesh Electricals) is not in a position to help the workman to continue with her present job. However, M/s Dashmesh Electricals assured the workman that if the office of the management, renews the contract or invite the tender afresh, it (M/s Dashmesh Electricals) will keep her present job continued. The Superintending Engineer, Project P.H. Circle, Chandigarh, vide its office order, dated 27.09.2018, had granted sanction for outsourcing of three vacancies of Clerk-cum-Computer Operators for the office of the management. Against these sanctioned posts, since the workman was already working so the remaining two vacancies were filled up in the month of October, 2019; through outsourcing methods by appointing Sh. Jatin Sehgal and Smt. Aman. On the assurance of M/s Dashmesh Electricals, the workman met the management, in his office on 04.02.2020 and requested to either renew the contract entered by the office with M/s Dashmesh Electricals or invite the tender afresh so that she can continue with her present job, as it is a practice that only the Contractor is changed, if it happens, and not the workman. The management verbally told the workman that his office has only two sanctioned posts of Clerk-cum-Computer Operators meant to be filled up through outsourcing and Shri Jatin Sehgal and Smt. Aman are already working against these and as such, there is no vacancy against which the workman could be adjusted. Left with no other alternative, the workman also met the Superintending Engineer, Electrical Circle, U.T. Secretariat, Sector-9, Chandigarh, the Chief Engineer, U.T Secretariat, Sector-9, Chandigarh, i.e., the Head of the Engineering Department, and the Secretary Engineering-cum-Finance Secretary, U.T. Secretariat, Sector 9, Chandigarh, i.e. the overall in charge of the Engineering Department, in their respective offices to apprise them about the illegal & arbitrary action taken by the management and requested them for intervening in the matter to enable her to continue with her present job, but of no avail, as none of these authorities paid any heed to the request of the workman. However, the validity of allotment order of the workman was extended up to 03.02.2020 by the management vide its Office Memo No.2077, dated 14.02.2020. The right to regulate the employment of the workman rests with the management and not the Contractor (M/s Dashmesh Electricals). The workman is the employee of the management, as the ultimate supervision & control lies with the management as it decides where the workman will work and how long he/she will work and subject to what conditions. Even if the verbal statement of the management that only 2 Nos. of posts of Clerk-cum-Computer Operators are available is taken to be correct, then, still he ought to have appointed only one Clerk-cum-Computer Operator instead of 2 Nos. of Clerk-cum-Computer Operators in the month of October, 2019, because one Clerk-cum-Computer Operator, i.e. the workman was already working. From this, it is very much clear that the management has terminated the services of the workman only to adjust / appoint the above said persons namely Sh. Jatin Sehgal and Smt. Aman. If the assertion of the management that only two posts of Clerk-cum-Computer Operator are there is taken as correct, then the services of lastly appointed Clerk-cum-Computer Operator should have been dispensed with by the management and the workman should have been allowed to continue in service, as in cases, where services of contractual employees are required to be dispensed with / terminated due to a cut in number of sanctioned posts (outsourcing in this case). As has been verbally alleged by the management in the case of the workman, then the principle of 'First-in-Last-Out' and 'Last-in-First-Out' is made applicable. However, in the case of the workman, 'First-in-First-Out' has been made applicable by the management, which is totally illegal, arbitrary and against the principles of natural justice and in contravention of the settled position of law. While terminating the services of the workman, the management, totally ignored the principle of 'First-in-Last-Out' and officials much junior to the workman, i.e. Jatin Sehgal and Smt. Aman

have been allowed to continue in service. However, out of these two persons, one person namely Jatin Sehgal left the job immediately after illegal termination of services of the workman, with the result, one more post of Clerk-cum-Computer Operator had fallen vacant. But, instead of calling back the workman on duty keeping in view her repeated requests for allowing her to continue in service, the management has adjusted one Helper (newly appointed) namely Sh. Ravinder Kumar on the post of Clerk-cum-Computer Operator at its own level ignoring the claim of the workman in spite of the fact that she worked in the department continuously for 10 years without any break and is lawfully entitled to get her job back. This action on the part of the management is illegal, arbitrary, against the principles of natural justice and deserves to be set-aside. The management is exploiting the workforce by adopting such illegal and arbitrary practices, which are not acceptable in the eyes of law. The Chief Engineer, U.T Secretariat, Sector 9, Chandigarh, i.e. the Head of the Engineering Department, had submitted a proposal to the Secretary Engineering-cum-Finance Secretary, U.T. Secretariat, Sector 9, Chandigarh, i.e. the overall in charge of the Engineering Department for filling up 327 posts on outsource basis in the Electrical Wing of the Engineering Department, UT, Chandigarh, and on the said proposal, the Secretary Engineering has given the following remarks :

"If it is for re-engagement of workforce, then approved. No new outsourced person to be engaged."

From the above, it is very much clear that the Secretary Engineering has clearly directed to re-engage the workforce and not to outsource new persons. In compliance of these remarks / directions of the Secretary Engineering, the management was duty bound to call back / re-engage the workman on duty and allow her to continue in service, as the workman was already outsourced and she worked for 10 years continuously without any break and was making repeated requests to the department, particularly the management for allowing her to continue in service. But, instead of calling back the workman on duty, the management has adjusted one Helper (newly appointed) namely Sh. Ravinder Kumar on the post of Clerk-cum-Computer Operator at his own level ignoring the claim of the workman and in violation of remarks/directions of the Secretary Engineering, as mentioned above in spite of the fact that the workman worked in the department / office of the management continuously for 10 years without any break and is lawfully entitled to get her job back. This action on the part of the management is illegal, arbitrary, against the principles of natural justice and in violation of remarks / directions issued by the Secretary Engineering and as such, deserves to be set-aside. Although a copy of said remarks / directions of the Secretary Engineering is not officially available with the workman, however, she has managed to get a copy of Memo No.8233 dated 17.07.2020 issued by the Chief Engineer to the Superintending Engineer, Electrical Circle, U.T. Secretariat, Sector 9, Chandigarh, wherein the said remarks / directions of the Secretary Engineering have been mentioned / reiterated. The Secretary Engineering and the Chief Engineer, being the overall in charge and Head of the Engineering Department, UT, Chandigarh, respectively, have full powers/authority to intervene in the matter and allow the workman to continue in service either in the office of the management or in any other office of the Engineering Department, UT, Chandigarh, as there are about 15-20 Divisions in Engineering Department, UT, Chandigarh, under the control of the Secretary Engineering and the Chief Engineer, keeping in view the long continuous service of 10 years of the workman so that justice may be done to the workman. Now the workman has become overage and it will be very difficult for her to get a job in any other office easily. Therefore, if the workman's services are terminated at this stage and she is not allowed to continue in service, then she will face great financial loss and mental agony. Being aggrieved by the illegal & arbitrary action of the management and the position explained by M/s Dashmesh Electricals, the workman served demand notice dated 26.06.2020 to the management. A copy of the Demand Notice was also served through Registered Post to M/s Dashmesh Electricals, H. No. 550, Phase-III-A, S.A.S. Nagar, Mohali, for necessary action, but the same was received back by the workman from postal authorities as 'unclaimed'. After the receipt of the demand notice the management took the plea that the workman was appointed through outsource agency i.e. M/s PESCO in the year 2010 and the workman was an employee of PESCO (earlier) and M/s Dashmesh Electricals (later on) and not their employee, invoking the tailor-made terms & conditions of the contract / agreement, entered by it with the contractor. The management also took the plea that it is the Contractor, i.e. M/s Dashmesh Electricals, who has terminated the services of the workman and not the management. However,

the management admitted the fact that sanction was granted for appointment of employees through outsource agency, but took the stand that the workman has no claim as an employee of the management. From the aforementioned submissions it can easily be summed up that both the Management and the Contractor are putting the onus of terminating the services of the workman on each other, leaving the workman in the lurch to fend for herself. Though it is stand of the management that the workman was appointed through PESCO, but it is submitted that the initial appointment of the workman was only for six months and thereafter the workman was allowed to continue by the management. The attendance of the workman was marked in the office of management. During the conciliation proceedings, no amicable settlement arrived, so the Assistant Labour Commissioner (ALC) vide Memo dated 24.09.2020 advised the workman to approach the appropriate forum for adjudication of dispute. The workman had completed more than 240 days in a calendar year and thus falls within the definition of 'workman' and the management falls within the definition of 'industry'. This Court / Tribunal has got the jurisdiction to entertain and try the present claim statement. The ALC was unable to settle the dispute and thus advised the workman to approach the appropriate forum vide letter dated 24.09.2020. Hence the statement of claim/petition is within limitation. Prayer is made that the instant claim statement may be allowed and the illegal verbal termination order dated 03.02.2020 be set aside and the workman be re-instated in the service with full back wages and consequential benefits in the interest of justice.

3. On notice, the management No.1 appeared through its SDE Shri Sanjeev Sharma and thereafter on 07.07.2021 Shri Jaspal Singh - Junior Assistant filed authority letter on behalf of the management No.1 and subsequently the management No.1 appeared through Law Officer. Management No.1 filed written statement dated 18.08.2023 wherein preliminary submission are made to the effect that the present claim statement is not maintainable against the answering management and liable to be dismissed on the ground that the workman was hired by the contractor i.e. M/s PESCO on 02.02.2010 and also the services of the workman was terminated by the subsequent contractor M/s Dashmesh Electricals. The present claim statement is barred for the non-joinder of necessary parties and is liable to be dismissed as the workman has not arrayed both the contractor i.e. M/s PESCO and M/s Dashmesh Electricals as party in the present claim statement. The services of workman were hired through outsource agency i.e. M/s PESCO and was transferred to the Electrical Division No. 3 on 18.03.2015 by the said agency vide letter dated 18.03.2015. Subsequently contract was awarded to M/s Dashmesh Electricals the contract dated 31.12.2018 between the M/s Dashmesh Electricals and the management No.1 was from 19.01.2019 to 18.01.2020. Clause No. 6 of the terms and conditions of the allotment is reproduced as under:-

"6. The persons employed by the agency on work shall be his employees only and not to the department. In no case any relationship of employee & employer shall accrue implicitly or explicitly between the persons employed by agency & Executive Engineer, Electrical Division No. 3 or any employee of Executive Engineer, Electrical Division No. 3, Chandigarh Administration."

The workman was hired by the contractors i.e. M/S PESCO and M/s Dashmesh Electricals. Neither appointment letter was ever issued to the workman nor services of the workman were terminated by the management No.1. As per the clause No. 6 of contract the workman was employee of contractor for all intents and purposes. The contract between the M/s Dashmesh Electricals and management No.1 was terminated with the efflux of time. The workman was not the employee of management, therefore, there is no relationship of employer and employee exist between the management No.1 and workman.

4. Further on merits, it is admitted to the extent that the workman was hired through outsource agency M/s PESCO. The workman was hired by the outsource agency M/s PESCO. The issue of appointment letter dated 02.02.2010, as alleged in para 1 of the claim statement is matter of record. It is denied for want of knowledge to the extent that the workman had discharged her duties with full devotion and competency. It is denied that workman continuously worked in the office of Sub Division Engineer, Electrical Sub Division No. 6, UT Chandigarh. It is admitted that the workman was transferred in office of management No.1 vide office order dated 18.03.2015 by the outsource agency i.e. M/s PESCO. It is matter of record that in

compliance with order dated 18.03.2015 workman submitted joining report in the office of Executive Engineer. It is admitted by the workman that she was employee of contractor i.e. PESCO and M/s Dashmesh Electricals. In view of clause No. 6 of contract dated 31.12.2018, the workman is employee of the contractor / outsource agency and not of the department and there exist no relationship of employee-employer between workman and management No.1. It is further stated that the workman was hired by M/s Dashmesh Electricals against the tender allotment, vide Memo No.3682-87 dated 31.12.2018 and as per the Clause No. 12 of the said agreement, *"The period of Contract can be increased or decreased and no claim for any extra rates on this account will be entertained"*. The service of the workman was terminated by the contractor and not by the management No.1. Management No.1 is not responsible for termination of her services. The contract between the management No.1 and M/s Dashmesh Electricals was terminated with efflux of time. It is the prerogative of the agency which has employed the manpower to appoint anyone on the post of workman in the office. The worthy Secretary Engineering, vide letter dated 17.07.2020 issued the order to the re-engagement of work force conveyed to this office by the Higher Office, pertains to the Field Staff and not the Clerical Establishments. The policy of the Government to hire the services through outsource and accordingly, the services were hired through the agency under which the workman was working. The conciliation proceedings before the ALC and failure report dated 24.09.2020 is a matter of record. The employment period of the workman as outsource employee from 02.02.2010 to 03.02.2020 is a matter of record. Further similar stand is taken as taken in the preliminary submissions. Rest of the averments of claim statement are denied as wrong. Prayer is made that the claim statement against management No.1 may be dismissed being without any merits.

5. Management No.2 / PESCO, contested the claim statement by filing separate amended written statement dated 13.02.2024, filed on 14.02.2024, wherein preliminary objections are taken on the ground that there is no lawful and enforceable cause of action against the management No.2, therefore, the present reference is not maintainable, qua the management No.2. The workman was employed as Computer Operator on Contractual basis with management No.1 and lastly the workman was engaged on contractual basis by the management No.2 for specific period i.e. for 12 months and deployed with management No.1 w.e.f 19.01.2018 till 18.01.2019 only, when the management No.2 was lastly allotted labour contract vide Memo No 109 dated 08.01.2018 for twelve months only, effective from 19.01.2018 till 18.01.2019. The workman left the job of the management No, 2 on 19.01.2019, when the agreement between management No 1 & management No.2 came to an end. The labour contract between the managements No.1 & 2 came to an end on 18.01.2019, where-after the management No. 3 (M/s Dashmesh Electricals Mohali) was engaged as new contractor. The workman is alleging that her services have been terminated on 03.02.2020. Therefore, as on 03.02.2020 the answering management did not have any privity of contract with management No. 1 or any relation with the workman, hence the present reference may be dismissed qua the answering management Punjab Ex-Servicemen Corporation (PESCO). There existed no employer-employee relationship or master-servant relationship between the answering management and the workman at the time of her alleged termination on 03.02.2020, hence the reference is liable to be dismissed qua the answering management, the same being untenable.

6. Further on merits, it is admitted that that the workman was appointed through the management No.2 and deployed with the management No.1 as Computer. Operator. The issue of appointment letter dated 02.02.2010, service period of the management in the office of Sub-Divisional Engineer, Electrical Sub-Division No.6, U.T. Chandigarh till March, 2015 and thereafter on transfer vide order dated 18.03.2015, joining of the workman with Executive Engineer is a matter of record. The fact that the workman remained in continuous service through PESCO till 18.01.2019 is a matter of record. It is also a matter of record that after termination of contract with PESCO, the contract was allotted to M/s Dashmesh Electricals for the period w.e.f. 19.01.2019 to 18.01.2020 and that M/s Dashmesh Electricals issued appointment letter to the workman. The extension of contract to M/s Dashmesh Electricals up to 31.01.2020, inviting of tender by the management No.1 on 10.01.2020, issue of corrigendum dated 20.01.2020 is denied for want of knowledge. It is also denied for want of knowledge that on 31.01.2020 the workman was not intimated regarding termination of her services and she continued attending office and worked up to 03.02.2020. The fact that the workman was appointed through PESCO and thereafter she was allowed to continue by the management and that her attendance was marked in the office

of Executive Engineer is a matter of record. Rest of the averments of claim statement are denied for want of knowledge. It is specifically stated that the answering management was never made a party in the proceedings before the ALC Chandigarh as no relief whatsoever, was being claimed by the workman against the answering management. Prayer is made that the present reference deserves to be dismissed as the same being legally not maintainable qua the answering management and the workman is not entitled to any relief(s) whatsoever prayed for, from the answering management, in the interest of justice and fair play.

7. Proprietor of Management No.3 contested the claim statement by filing separate written statement dated 20.09.2023 wherein it is stated that the initial appointment of the workman vide letter dated 02.02.2010 is a matter of record. It is further stated that the allotment of providing services of Clerk-cum-Computer Operator in the office of management No.1-Executive Engineer was made in favour of firm of management No.3 for the period w.e.f. 19.01.2019 to 18.01.2020 which was further extended up to 03.02.2020 by the office of management No.1. Accordingly, the services of the workman were provided by the management No.3. But after the expiry of said allotment / contract, no further allotment was made in favour of management No.3, with the result, the services of the workman could not be provided in the office of management No.1 by the answering management. Rest of the averments of claim statement are replied being matter of record. Prayer is made that claim statement against the answering management may be dismissed in the interest of justice, equity and fair play.

8. It is pertinent to mention here that on moving of application on dated 02.12.2022 by the workman, vide order dated 21.04.2023 PESCO through its General Manager and M/s Deshmesh Electricals through its Proprietor were allowed to be impleaded as management No.2 & 3 respectively.

9. The workman filed separate replication to the written statement of managements No.1 to 3 (in replication to written statement of management No.2 which consist of para 1 to 20, due to clerical mistake it is incorrectly mentioned by the workman as rejoinder to written statement of management No.3, although there is a separate replication to the written statement of management No.3), wherein the contents of the respective written statements are denied except the admitted facts and the averments of the statement of claim are reiterated.

10. From the pleadings of the parties, following issues were framed vide order dated 13.09.2019 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief she is entitled to, if any ? OW
2. Whether there is relationship of employer & employee between the workman and management ? OPM
3. Whether the claim of the workman is bad for non-joinder of necessary parties ? OPM
4. Relief.

11. In evidence, the workman Seema Rani examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with documents Exhibit 'W1' to Exhibit 'W13'.

Exhibit 'W1' is copy of appointment letter dated 02.02.2010 issued by Punjab Ex-Service Corporation to Seema Rani.

Exhibit 'W2' is copy of letter bearing No.1083/TFR/PESCO dated 17.03.2015 intimating inter-unit transfer order of Seema Rani

Exhibit 'W3' is copy of Memo No.3682-87 dated 31.12.2018 issued by the Executive Engineer, Electrical Division No.3, Chandigarh to M/s Dashmesh Electricals on the subject providing staff on contract basis Clerk-cum-Computer Operator - Chargeable to Wages - 2059 (for 12 months) (for the period from 19.01.2019 to 18.01.2020).

Exhibit 'W4' is copy of letter appointment letter dated 18.01.2019 issued by Dasmesh Electricals to Seema Rani.

Exhibit 'W5' is copy of Memo No.57 dated 03.01.2020 issued by the Executive Engineer, Electrical Division No.3, Chandigarh to M/s Dasmesh Electricals, H.No.550, Phase - III-A, S.A.S. Nagar, Mohali on the subject providing staff on contract basis Clerk-cum-Computer Operator - Chargeable to Wages - 2059 (for 12 months) (for the period from 19.01.2019 to 18.01.2020).

Exhibit 'W6' is copy of tender notice bearing endorsement No.E.E.E.-3/399-406 dated 10.01.2020.

Exhibit 'W7' is copy of corrigendum bearing endorsement No.730-37 dated 20.01.2020.

Exhibit 'W8' is copy of memo bearing endorsement No.10940-42 dated 27.09.2018 from Superintending Engineer, Project P.H. Circle, Chandigarh to Superintending Engineer, Construction Circle - 1 / Electrical Circle and Executive Engineer, Electrical Div. No.3, Chandigarh.

Exhibit 'W9' is copy of Memo No.2077 dated 14.02.2020 issued by the Executive Engineer, Electrical Division No.3, Chandigarh to M/s Dasmesh Electricals, H.No.550, Phase - III-A, S.A.S. Nagar, Mohali for providing staff on contract basis Clerk-cum-Computer Operator - Chargeable to Wages - 2059 (for 12 months) (for the period from 19.01.2019 to 18.01.2020).

Exhibit 'W10' is copy of Memo No.W1/2020/8233 dated 17.07.2020 issued by the Chief Engineer-cum-Special Secretary Engineering, Union Territory Chandigarh to the Superintending Engineer, Electrical Circle, U.T. Chandigarh for filing up 327 posts on outsource basis in the Electrical Wing of the Engineering, U.T. Chandigarh.

Exhibit 'W11' is copy of demand notice dated 24.06.2020 under Section 2A of the ID Act raised by Seema Rani to the Executive Engineer, Electrical Division No.3, Sector 4, Chandigarh sent through registered post.

Exhibit 'W12' is copy of registered envelope bearing dated 24.06.2020 sent to M/s Dasmesh Electricals by Seema Rani.

Exhibit 'W13' is copy of Memo No.3520 dated 24.09.2020 issued by the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh to Seema Rani.

12. After impleading managements No.2 & 3, the workman re-examined herself and tendered supplementary evidence vide affidavit Exhibit 'AW1/AA'. On 29.07.2024 Learned Representative for the workman closed evidence in affirmative on behalf of the workman.

13. On the other hand, management No.1 examined MW1 Aabshar Kumar Jain - Sub-Divisional Engineer, Electrical Sub-Division No.10, O/o Executive Engineer, Electrical Division No.3, U.T. Chandigarh, who tendered his affidavit Exhibit 'MW1/A' along with documents Exhibit 'M1' & Exhibit 'M2' and Mark 'MX' & Mark 'MY'.

Exhibit 'M1' is attested copy of inter unit transfer order bearing No.1083/TFR/PESCO dated 17.03.2015.

Exhibit 'M2' is attested copy of letter memo No. 3682-87 dated 31.12.2018 issued from Executive Engineer, Electrical Div. No.3, Chandigarh to M/s Dasmesh Electricals House No.550, Phase 3-A, Mohali (Punjab) on the subject of providing staff on contract basis Clerk-cum-Computer Operator-Chargeable to wages-2059 for 12 months for the period from 19.01.2019 to 18.01.2020.

Mark 'MX' is photocopy of letter No.1083/appointment/PESCO dated 02.02.2010 issued from GM (Pers. & Projects) to Seema Rani D/o Krishan Lal.

Mark 'Y' is photocopy of copy of letter dated 18.01.2019 issued from Dasmesh Electrical, Mohali to Seema Rani directing her to join their organisation w.e.f. 19.01.2019.

14. Management No.2 examined MW2 Gurpreet Singh - Legal Assistant with M/s Punjab Ex-Servicemen Corporation (PESCO), Chandigarh, who tendered his affidavit Exhibit 'MW2/A' along with documents Exhibit 'MW2/1' to Exhibit 'MW2/4'.

Exhibit 'MW2/1' is authority letter dated nil issued in favour Shri Gurpreet Singh by General Manager (Admin), Punjab Ex-Servicemen Corporation, Chandigarh.

Exhibit 'MW2/2' is attested copy of letter bearing memo No.109 dated 08.01.2018 issued from The Executive Engineer, Electrical Division No.3, Chandigarh to M/s PESCO, Chandigarh.

Exhibit 'MW2/3' is attested copy of payment of gratuity paid to the workman on 01.06.2020.

Exhibit 'MW2/4' is attested copy of statement issued by Financial Controller of management No.2 to the Manager, State Bank of India, Sector 34-A, Chandigarh relating to the subject of payment of gratuity.

15. Management No.3 did not adduce any evidence either oral or documentary.

16. On 10.09.2024 Learned Law Officer for management No.1 closed evidence. On 29.08.2024, Learned Representative for management No.2 closed evidence. On 18.09.2024 Shri Pritam Singh - Proprietor closed evidence on behalf of management No.3.

17. I have heard the arguments of Learned representative for the parties and Learned Law Officer for management No.1 and perused the judicial file. My issue-wise finding are as below :-

Issues No. 1 & 2 :

18. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

19. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management.

20. In order to prove its claim workman Seema Rani examined herself as AW1 and vide her affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for sake of brevity. AW1 supported her oral version with the documents Exhibit 'W1' to Exhibit 'W13'. After impleading managements No.2 & 3, AW1 re-examined herself and tendered her supplementary evidence by way of affidavit Exhibit 'AW1/AA' wherein she deposed that she earlier tendered evidence by way of affidavit on 22.11.2021. The contents of the said affidavit may be read as a part of present additional evidence and are not repeated herein for sake of brevity. She further deposed that subsequently, on 02.12.2022, a necessity arose for impleading Punjab State Ex-Servicemen Corporation (PESCO) and M/s Dashmesh Electricals as respondent-management Nos. 2 and 3 for which an application under Order 1 Rule 10 CPC read with Section 151 CPC/2-A of the ID Act was filed. The said application was allowed by this Tribunal. The newly impleaded respondent-management Nos. 2 and 3 filed their respective replies which were duly rebutted by way of rejoinders. In rebuttal to the averments made by respondent-management No.2, it was specifically pointed out that respondent-management No.2 was well aware of the fact that his contract with respondent-management No.1 was to expire on 18.01.2019. Obviously, a notice could have been given to the workman which respondent-management No.2 failed to give. However, respondent-management No.3 took over the liability and allowed the workman to continue in service. Even the respondent-management No.3 terminated the services of the workman on 03.02.2020 without complying with the provisions of the ID Act. The relationship of employer-employee or master-servant normally terminates on 03.02.2020 when the workman was orally terminated, but the employer is responsible for complying with the provisions of the ID Act during the period the workman served under him. Since there was non-compliance of the mandatory provisions of Section 25-FF of the ID Act, the termination itself cannot be sustained and is bad in the eyes of law. She further deposed that she was appointed on 02.02.2010 and joined as such in the office of management without any break till 03.02.2020. Even the management did not give prior notice of termination without complying with the provisions of Section 25FF of the ID Act knowing that the workman had already completed 10 years of service. She further

deposed that right from her engagement as workman she continued to be deployed as such till 19.01.2019 when the contract of respondent-management No.2 expired and the services of the workman were taken over by respondent-management No.3. Neither respondent-management No.2 nor respondent-management No.3 gave any notice before terminating the services of the workman. Even the requirement of Section 25FF of the ID Act regarding payment of compensation was not adhered to. For the termination of the workman without notice payment of compensation in terms of ID Act respondent-management Nos.1 to 3 are responsible. The termination is therefore, not sustainable in the eyes of law and deserves to be set aside with the prayer as in the claim statement.

21. On the other hand, the management No.1 examined MW1 Aabshar Kumar Jain - Sub-Divisional Engineer, Electrical Sub-Division No.10 who vide his affidavit Exhibit 'MW1/A' deposed the entire material contents of the written statement of management No.1, which are not reproduced in order to avoid repetition. MW1 supported his oral version with documents Exhibit 'M1' & Exhibit 'M2' and Mark 'MX' & Mark 'MY'.

22. Management No.2 examined MW2 Gurpreet Singh - Legal Assistant with PESCO, Chandigarh, who vide his affidavit Exhibit 'MW2/A' deposed that he is working as Legal Assistant with PESCO and fully conversant with the facts of the case on the basis of record. He has been duly authorised to appear, represent, swear an affidavit, produce the documents and deposed before this Court vide authority letter Exhibit 'M2/1'. MW2 in his remaining testimony deposed the entire material contents of written statement of management No.2 which are not reproduced here to avoid repetition. MW2 supported his oral version with documents Exhibit 'M2/2' to Exhibit 'M2/4'.

23. As discussed above, there is no evidence either oral or documentary on behalf of management No. 3.

24. From the oral as well as documentary evidence led by the parties, it comes out that undisputedly, the workman was initially appointed by the contractor / outsource agency - management No.2 i.e. M/s PESCO, Chandigarh as Computer Operator w.e.f. 03.02.2010 vide appointment letter dated 02.02.2010 /Exhibit 'W1' for six months. The workman on appointment was deputed in the office of Sub-Divisional Engineer, Electrical Sub-Division No.6, U.T. Chandigarh. The tenure of contractual service of the workman was extended from time to time. The workman remained in continuous employment with the office of Sub-Divisional Engineer, Electrical Sub-Division No.6, U.T. Chandigarh up to March, 2015. Thereafter, vide inter-unit-transfer order dated 17.03.2015 / Exhibit 'W2', the workman was transferred w.e.f. 19.03.2015 from Executive Engineer, Electrical Division No.1 to the Executive Engineer, Electrical Division No.3 for 10 months. Further there is no dispute between the parties with regard to the fact that in compliance with order Exhibit 'W2', the workman submitted her joining report in the transferee office of Executive Engineer, where she remained in employment under contractor PESCO till 18.01.2019 and she remained in employment under contractor M/s Dshmesh Electricals from 19.01.2019 to 18.01.2020. Undisputedly, the initial contract between management No.1 and M/s Dshmesh Electrical - management No.3 expired on 18.01.2020 which was further extended up to 31.01.2020 vide letter dated 03.01.2020 / Exhibit 'W5' issued from Executive Engineer, Electrical Division No.3, Chandigarh to M/s Dashmesh Electricals and accordingly, the workman remained in employment of M/s Dshmesh Electricals up to 31.01.2020.

25. Learned Representative for the workman argued that none of the managements informed the workman regarding non-renewal of contract of management No.1 with any of the contractors or outsource agency, though the workman continued attending the office of management No.1 and worked up to 03.02.2020 when her services were terminated by verbal order w.e.f. 04.02.2020 without giving any notice and without taking into consideration her continuous service period of 10 years. On the other hand, Learned Law Officer for management No.1 argued that it is own case of the workman that she was appointed on contract basis by PESCO - contractor - management No.2 and after the expiry of contract between management No.1 & 2, next contract was allotted by the management No.1 to M/s Dashmesh Electricals - management No.3 and the workman was deployed as contractual worker initially by management No.1 w.e.f. 03.02.2010 up to 18.03.2015 by PESCO - management No.2 and thereafter deployed as contractual worker w.e.f. 19.01.2019 up to 31.03.2020 by M/s Dshmesh Electricals - management No.3. After expiry of

the last contract of management No.1 with management No.3 by efflux of time, it is the concerned contractor who has terminated the services of the workman and the management No.1 has nothing to do with the same. On the other hand, Learned Representative for management No.2 argued that after expiry of the contract of the management No.1 with management No.2 on 18.01.2019, the same was not renewed and the workman was taken over by the next contractor M/s Deshmesh Electrical, thus after 18.01.2019 there remained no employer-employee relationship between management No.2 and workman. The Proprietor of management No.3 argued that so long there was a contract between the management No.1 and firm of management No.3, the workman was deployed with the management No.1 but after the expiry of contract on 31.01.2020 the workman could not be deployed with management No.1.

26. To my opinion, the arguments advanced on behalf of the parties would suggest that the workman was a contractual employee from the initial date of joining i.e. 03.02.2010 up to 31.01.2020 and during the entire period of employment, the workman was deployed as outsource employee with the Department of Executive Engineer, in its unit of Electrical Division No.1 up to 18.03.2019 and its unit of Electrical Division No.3 up to 31.01.2020. The workman was paid salary by the contractor. The workman / AW1 when put to cross-examination by management No.1 stated that no appointment letter was ever issued by the management and voluntarily stated that the contractor issued the appointment letter Exhibit 'W1'. AW1 further stated that no termination letter was ever issued by the management. AW1 further stated that the department used to prepare the salary bill and sent to M/s PESCO and thereafter she got salary in her account. AW1 admitted as correct that between M/s Deshmesh Electrical and management the contract was executed on 31.12.2018 and the copy of the same is Exhibit 'W3'. AW1 stated that she cannot tell whether the condition No.6 is that she is employee of the contractor enumerated in Exhibit 'W3' or not. AW1 stated that she is well conversant with English language. Her attention was drawn towards clause 6 of Exhibit 'W3' wherein it is mentioned that *"The persons employed by the agency on work shall be its employees only and not of the deptt. In no case any relationship of employee & employer shall accrue implicitly or explicitly between the persons employed by agency & Executive Electrical Division No.3 or any employee of the Executive Engineer Electrical Division No.3, Chandigarh Administration"*. All the above facts & circumstances would prove that there was no relationship of employer & employee between the management No.1 and the workman. It was the contractor - management No.2 which was the employer from the date of appointment till 18.01.2019 and it was the contractor - management No.3 which was the employer from 19.01.2019 up to 31.01.2020.

27. From the initial appointment letter dated 02.02.2010 / Exhibit 'W1' it is quite clear that the workman was aware of the fact that she will remain in employment as a contractual worker so long there is a contract between the department of Executive Engineer and the contractor. To this effect there was clause 5 in appointment letter Exhibit 'W1' which envisaged that her appointment is on probation for the first six months. After that, her work will remain on contract basis for as long as PESCO has a security co-contract with the client. Her continued employment shall be subject to the instructions of the Board of Director as may be changed from time to time. Her services may be terminated at any time during the probation period. After that during her job, her services can be terminated at any time without assigning any reason by giving her one month's notice. In the manner, she can also quit her job by giving one month's notice or paying one month's salary. She can be transferred at any point in PESCO / project as per need for any reason during employment. In view of above-mentioned clause issue of prior notice was required only if the services of the workman were to be terminated before the expiry of period of contract between the contractor and the department and in case of expiry of contract by efflux of time, then the services of the workman will be dispensed with. In the present case, the services of the workman are not terminated by any kind of verbal or written order during the period of contract between the parties. The workman stands relieved from service on expiry of last contract of the department - management No.1 with the contractor - management No.3 by efflux of time and once the services of contractual worker are dispensed with on expiry of contract by efflux of time, the same cannot be termed as illegal.

28. Accordingly, issue No.1 is decided against the workman and in favour of managements and issue No.2 is decided in favour of management No.1 and against the workman.

Issue No. 3 :

29. Onus to prove this issue is on the management.

30. Management No.1 in the written statement raised the objection of non-joinder of necessary parties i.e. PESCO and M/s Deshmesh Electricals. Since the PESCO and M/s Deshmesh Electrical were impleaded as management No.2 & 3 respectively vide order dated 21.04.2023, thus this issue was not pressed by Learned Law Officer during course of arguments.

31. Accordingly, this issue is proved against the management No.1 and in favour of the workman.

Relief :

32. In the view of foregoing findings on the issues No. 1 & 2 above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

Dated : 27.09.2024.

(JAGDEEP KAUR VIRK),
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

Secretary Labour,
Chandigarh Administration.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Notification

The 3rd December, 2024

No. 214 E.I./V.B.—Sh. Naresh Kumar, Superintendent Grade-I of the Punjab and Haryana High Court at Chandigarh has retired from the service of this Hon'ble Court w.e.f. 30.11.2024 (A.N.) on attaining the age of superannuation i.e. 58 years.

(Sd.) . . . ,

(ASHISH KUMAR BANSAL),
Registrar (Administration),
for Registrar General.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Notification

The 3rd December, 2024

No. 215 E.I./V.B.—Smt. Savita Rani Singla, Superintendent Grade-I of the Punjab and Haryana High Court at Chandigarh has retired from the service of this Hon'ble Court w.e.f. 30.11.2024 (A.N.) on attaining the age of superannuation i.e. 58 years.

(Sd.) . . . ,

(ASHISH KUMAR BANSAL),
Registrar (Administration),
for Registrar General.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Notification

The 3rd December, 2024

No. 216 E.I./V.B (3E).—Sh. Greesh Sahni, Special Secretary (Stenography line) of Punjab and Haryana High Court at Chandigarh has retired from service of this Court w.e.f. 30.11.2024 (A.N.) on attaining the age of superannuation i.e. 58 years.

(Sd.) . . . ,

(ASHISH KUMAR BANSAL),
Registrar (Administration),
for Registrar General.

HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Notification

The 3rd December, 2024

No. 217 E.I./V.B (3E).—Ms. Sunita Nagpal, Special Secretary (Stenography line) of Punjab and Haryana High Court at Chandigarh has retired from service of this Court w.e.f. 30.11.2024 (A.N.) on attaining the age of superannuation i.e. 58 years.

(Sd.) . . . ,

(ASHISH KUMAR BANSAL),
Registrar (Administration),
for Registrar General.

CHANGE OF NAME

I, Pinki W/o Manohar Kanauiya # 119, Burail, Sector 45, Chandigarh, have changed my name to Praveen Devi.

[1789-1]

I, Raja Ram Singh S/o Bhulur Singh R/o # 1668, Sector 45, Burail, Chandigarh, declare that I have changed my minor daughter's name from Hriya to Riya.

[1790-1]

I, Chando Devi W/o Sh. Baljit Singh R/o # 1912, Small Flats Dhanas, Chandigarh, have changed my name from Chando Devi to Chand Kaur.

[1791-1]

I, Ranjana Daughter of Raj Kumar Shahi R/o # 3070, Sector 40-D, Chandigarh, hereby declare that I have changed my name from Ranjana to Ranjana Shahi.

[1792-1]

I, Shakuntla Wife of Raj Kumar Shahi R/o House No. 3070, Sector 40-D, Chandigarh, hereby declare that I have changed my name from Shakuntla to Shakuntala Rani.

[1793-1]

I, Suraj Kumar S/o Bijender Kumar # 2436/2, Mari Wala Town Manimajra, Chandigarh. That I have changed my name from Suraj Kumar to Suraj.

[1794-1]

I, Ankush Kumar S/o Ram Singh R/o House No. 663/C, Sector 44-A, Chandigarh, have changed my name from Ankush Kumar to Ankush Thakur.

[1795-1]

I, Bibha Devi w/o Lalit Kumar Jha # 3/7, Near Baba Smabha, Hallo Majra, Chandigarh, have changed my name to Vibha Devi.

[1796-1]

I, Komal D/o Shri Kundan Singh Negi Resident of # 750/1, Mohalla Dera Sahib, Mani Majra, Chandigarh, do hereby declare that I have changed my name Komal to Komal Negi.

[1797-1]

I, Paskal Khakha S/o Paulus Khakha # 1235, Burail, Sector-45, Chandigarh, have changed my name to Paskal Mahto.

[1798-1]

I, Hari Parkash Sharma S/o Shiv Bahadur # 4685, Maloya Colony, Chandigarh, have changed my name to Hari Parkash.

[1799-1]

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